IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3816 OF 1999.

Ashok Rajaram Pavale. ... Applicant.
Versus.
State of Maharashtra. ... Respondent.

Shri V.P.Sawant for the Applicant.

Shri R.Y.Mirza, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 13th October, 2005.

P.C.:

1. Heard Shri Sawant for the Applicant and the learned A.P.P. for the State.

2. The conviction of the Applicant is under sections 304A and 338 of the Indian Penal Code. The order of the learned Magistrate was confirmed in appeal. The Applicant preferred a Revision Application in this Court for challenging the conviction and sentence. By order dated 6thg May 1999, the Revision Application came to be rejected on merits and the order of conviction and sentence was confirmed. However, this Court permitted the Applicant to file a separate application for claiming benefit of the Probation of Offenders Act, 1958. This Court, however, observed that the Applicant will have to surrender to his bail bond first. Criminal Application No.2151 of 1999 was made by the Applicant seeking benefit of the Probation of Offenders Act 1958.

The said application was rejected by giving liberty to the Applicant to move after he surrenders. Accordingly the present application is filed after the Applicant has surrendered. On 13th January 2000, this Court admitted the present Application and granted bail in favour of the Applicant.

3. Shri Sawant relied on a decision of the Apex Court reported in 2004 (2) S.C.C. page 338 (Sushil Murmu v/s. State of Jharkhand). He also relied upon an another decision of the Apex Court reported in 1995 Supp. (2) S.C.C. page 385 (A.P.Raju v/s. State of Orissa), and 1981 (Supp.) S.C.C. page 17 (Aitha Chander Rao v/s. State of Andra Pradesh. He submitted that in the cases Aitha Chander Rao and A.P.Rao (supra) the Apex Court has granted benefit of the provisions of the Probation of Offenders Act, 1958 and section 360 of the Code of Criminal Procedure, 1973 to the Petitioners therein though conviction was under section 304A of the Indian Penal Code. He submitted that considering the facts of the present case, the Applicant deserves to be granted the same relief. The Application is opposed by the learned A.P.P.

4. My attention has been invited to the decision of the Apex Court reported in 2000(2) Crimes, page 280 (S.C.) (Dalbir Singh v/s. State of Haryana. This was a case where conviction was under section 304A of the

Indian Penal Code. In paragraphs 1 and 13 the Apex Court has held thus:

> "1. When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. **One of the most effective ways of keeping such drivers under mental vigil is to maintain deterrent element in sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and frolic.**" (Emphasis supplied)

> "13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, **criminal courts cannot treat the nature of the offence under section 304-A IPC as attracting the benevolent provisions of section 4 of the P.O.Act. While considering the quantum of sentence, to be imposed for the offence of causing death by rash or negligent**

driving of automobiles, one of the prime considerations should be deterrence."

(Emphasis supplied.)

Confronted with this judgment, Shri Sawant submitted that the said judgment is delivered in the peculiar facts of the case before the Apex Court. He submitted that the case of the Applicant can be considered even under section 360 of the said Code of 1973.

5. The Apex Court in the case of Dalbir Singh (supra) held that while considering the quantum of sentence for any offence under section 304A of the IPC, there has to be deterrent element in sentencing sphere. The Apex Court further observed that criminal courts cannot treat the nature of the offence under section 304-A of IPC as attracting the benevolent provisions of section 4 the of Probation of Offenders Act. If this is the view taken by the Apex Court, in the light of the Judgment of the Apex Court, surely benefit under section 360 of the said Code of 1973 cannot be extended to the Applicant. The decision of the Apex Court in case of Sushil (supra) will not help the Applicant as the Apex Court was not dealing with the offence under section 304A. In the other two decisions relied upon by the Applicant, the Apex Court has not considered the questions which are considered in the later case of Dalbir Singh.

6. Hence there is no merit in the Application and the same is rejected. The bail granted to the Applicant is cancelled and he is directed to surrender to his bail. On the request made by Shri Sawant for the Applicant, time of six weeks is granted to surrender.

Judge.